

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION**

DARRYL STEVENSON,

Plaintiff,

v.

**LES HELTON, SHERIFF and
MUNICIPALITIES OF MARSHALL
COUNTY,**

Defendants.

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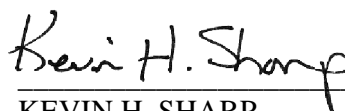
**No. 1:10-00043
Judge Sharp**

ORDER

The Magistrate Judge has entered a Report and Recommendation (“R & R”) (Docket No. 21) in which he recommends that Defendants’ Motion to Dismiss (Docket No. 14) for insufficient service of process under Fed. R. Civ. P. 12(b)(5) be denied. In doing so, the Magistrate Judge notes that “[i]f Defendants were not properly served in this case, Plaintiff is not responsible for that circumstance,” (Docket No. 21 at 3) because Plaintiff is proceeding *in forma pauperis*, and responsibility for service rests with the United States Marshal pursuant to 28 U.S.C. § 1915(d). As such, the Magistrate Judge submits that it would be inappropriate to dismiss the case. However, to remedy any lack of service, the Magistrate Judge also recommends that Defendants be given twenty days to file a notice of waiver of the defense, or to otherwise advise the Court on where and when they can be served. Defendants have filed responses to the R & R in which they waive service of process. (Docket Nos. 29 & 30).

Accordingly, the R & R (Docket No. 21) is hereby ACCEPTED AND APPROVED, and Defendants’ Motion to Dismiss (Docket No. 14) is hereby DENIED.

It is SO ORDERED.



KEVIN H. SHARP
UNITED STATES DISTRICT JUDGE